titled to re-entry. The court agrees that this is to be considered as a condition subsequent, but declares it void. The theory, in part, is as follows: that the granting of a fee simple is a conveyance of the whole estate, and carries with it an absolutely unfettered right of alienation; and the court thinks, on principle, that there should be no such restriction allowed either as to persons or time,—(following a dictum in *Murray* v. *Green,* 64 Cal. 367, in which case the restriction was not limited either as to persons or time), and that the same reasoning which declares void a restraint total as to persons, though limited as to time, (*Latimer* v. *Waddell,* 119 N. C. 370), should apply here with equal force; that any restraint on alienation is repugnant to the grant of a fee simple. The consideration of public policy, as involved in the uncertainty of titles which the court seemed to fear would follow if such restraints were allowed, seemed to have some weight in influencing the decision. Contra: In the following case it was held that a restriction in deed against selling to any negro is not an unlawful restraint on powers of alienation and not against public policy. *Koehler* v. *Rowland,* 275 Mo. 573; also substantially the same in *Queensborough Land Co.* v. *Cazeaux,* 136 La. 724, L. R. A. 1916 B, 1201. Professor GRAY, in his RESTRAINTS ON THE ALIENATION OF PROPERTY, discusses this subject after an exhaustive review of the cases—pp. 25-42. He states in part, § 41, as follows: "The authorities, it will be seen, are in hopeless conflict. The rule which naturally suggests itself is that a condition is good if it allows of alienation to all the world with the exception of selected individuals or classes; but is bad if it allows of alienation only to selected individuals or classes. (Williams on Settlements, 134, 135.) Perhaps this rule might be difficult of application, or easily evaded. At any rate the leading case of *Doe* v. *Pearson,* 6 East. 172, and the late case of *In re Macleay,* L. R. 20 Eq. 186, cannot be brought within it, for they both allow the power of alienation to be restrained within the narrowest limits; and Sir George Jessel says: 'The test is whether the condition takes away the whole power of alienation substantially.' L. R. 20 Eq. 189."

DIVORCE—ALIMONY—FUTURE EARNINGS AS PROPERTY UNDER STATUTE.—In a proceeding for divorce under the Ohio statute (General Code Sec. 11,990) providing that "the court shall * * * allow such alimony out of her husband's property as it deems reasonable, etc." it was contended that permanent alimony could not be allowed which was based upon the future personal earnings or wages of the husband. *Held,* that the words "out of her husband's property" were directory only and not mandatory and that permanent alimony could be based on future earning power under this particular statute. *Lape* v. *Lape* (Ohio, 1919), 124 N. E. 51.

The generally accepted doctrine in this country has been that future earnings could be considered as a basis for permanent alimony. *Campbell* v. *Campbell,* 37 Wis. 206; *Muir* v. *Muir,* 133 Ky. 125; *Griffin* v. *Griffin,* 173 Ky. 636; *Snyder* v. *Snyder,* 162 N. Y. Supp. 607. And this even though the statute provided for such alimony out of the husband's estate at the time of the divorce. In the Wisconsin case above cited, the court remarked: "We cannot regard it [the statute] as a hard provision, but as a remedial and bene-

ficial statute for the protection of natural claim, founded on natural relations." So, too, in the principal case, the court, although not citing in their opinion the decisions above mentioned, or *Cox* v. *Cox,* 20 Ohio St. 439, the latter a decision allowing alimony based upon property acquired subsequent to the divorce decree, gave a broad interpretation to the words of the statute upon the grounds of interpreting the intention of the General Assembly. The instant case in the lower court, Hamilton Insolvency Court, *Lape* v. *Lape,* 62 Ohio Law Bulletin 398, was developed on a different and contrary theory to the one given by the Supreme Court. *Davis* v. *Davis,* 21 Ohio Circuits 136; *DeWitt* v. *DeWitt,* 67 Ohio St. 340. There are early cases which lay down the proposition flatly that "alimony being an allowance out of the husband's estate for the support of the wife, when there is no estate, there can be no alimony." *Feigley* v. *Feigley,* 7 Md. Reports 537, 563. This is based on the theory that the duty to support stops with the decree of divorce. However the cases following the weight of authority, previously cited, refuse to follow this doctrine and go on the theory that the duty to support still continues. But in *Wilson* v. *Wilson,* 67 Minn. 444, where the statute provided for permanent alimony "from the estate of her husband", they interpreted the statute literally and held that future personal earnings could not be the basis for permanent alimony under that statute, and that the remedy lay with the legislature, the court admitting the equity of allowing permanent alimony based on future income, but also admitting their inability to correct it. *State of Minnesota ex rel. Wise* v. *Jamison,* 69 Minn. 427 sustained the above cited Minnesota case. To the same effect see also *Jackson* v. *Burns,* 116 La. 695.

EMINENT DOMAIN—PARTIES—INCHOATE DOWER—RIGHT TO DAMAGES.—Action by plaintiff against her husband for a share, as the fair and reasonable value of her inchoate right of dower, in damages awarded the husband in appropriation proceedings against land owned by him in fee. Plaintiff claims her right of action under statutes relating to the appropriation of land. *Held* —The wife's inchoate right of dower was not such an "interest, legal or equitable, in the property," as would require her to be a party to condemnation proceedings under the statute. Nor can she claim a present pecuniary interest in the damages awarded, for this fund is no different from any other personal estate of the husband. *Long* v. *Long* (Ohio, 1919), 124 N. E. 161.

The reasoning of the court appears sound. If the wife could share in the fund today, and the husband die tomorrow, she would again share in the remaining fund, as in all his other personal and real property. *Cf. accord, Weaver* v. *Gregg,* 6 Oh. St. 547; *Moore* v. *Mayor, etc. of City of New York,* 8 N. Y. 110; *Gwynne* v. *City of Cincinnati,* 3 Ohio 24; *Flynn* v. *Flynn,* 171 Mass. 312; *contra, Wheeler* v. *Kirtland,* 27 N. J. Eq. 534; *In re New York and Brooklyn Bridge,* 75 Hun 558. The *Weaver* case held that a partition sale divests the wife of a co-tenant in fee of her inchoate right of dower therein. The principal case is carefully distinguished from those in which creditors have subjected the husband's estate to the satisfaction of judgments rendered against him, in which the inchoate right of dower was ascertained and exempted from execution. In such cases the husband's interest has been wholly